



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

RECENT AND PENDING CONSTITUTIONAL CHANGES IN ENGLAND

EDWARD PORRITT

There are two obvious reasons for welcoming a new and revised edition of Sir William Anson's "Law and Custom of the Constitution."¹ The first edition was issued twenty-four years ago. The preface is dated March, 1886; so that the book must have been passed for the press within a few months after the first general election that followed the extension of the franchise and the redistribution of seats due to the legislation of 1884 and 1885. In the intervening years—1885–1909—there have been great changes in the general political conditions of England—changes which mainly affect the constituencies. There have also been large additions to the permanent work of many of the state departments—notably the home office, the local government board, the board of trade, the department of education, and the department of agriculture. Moreover resulting from these additions to the permanent work of the state departments and the increasing complexity of political conditions in the constituencies, there have been sweeping changes in the procedure of the house of commons—changes which by 1909 had made the cabinet practically dominant in that chamber. In this period too, and resulting partly from the changes in the constituencies and partly from changes in procedure in the house of commons, the house of lords came into a new relationship with the house of commons; and this change brought about the convulsion into which England was thrown almost at the time that Sir William Anson's last volume on the *Law and Custom of the Constitution* was passing through the press.

These changes in political conditions,—these additions to the

¹ *The Law and Custom of the Constitution*. By Sir William R. Anson, Bart. D. C. L., In Three Volumes. Fourth Edition. Oxford; At the Clarendon Press New York; Henry Frowde. 1909. PP. xxvi, 404; xxiv, 347; xxxii, 283.

functions of the state departments which bring them all into increasingly closer touch with the people; and these changes in the procedure of the house of commons and the altered relations of the two houses, would of themselves guarantee a welcome for a new and revised edition of Sir William Anson's classic treatise. But there is still another reason at this time for rejoicing in the new and revised edition. Between 1886 and 1909 there were large and exceedingly valuable additions to the sources on which a great treatise on the working of the constitution of England must be based. These new sources easily fall into two classes—political memoirs and monographs concerned with particular sections of the machinery of government. Additions to each class since 1886 have been numerous and valuable, and this is especially true as regards political memoirs. For the study of the nineteenth century development and of the modern working of the constitution there was in 1908 and 1909 more than twice the volume of first-hand material that was available in 1886. The cabinet system as it is understood and accepted in England today may be said to have been perfected only since the beginning of the reign of Queen Victoria in 1837. It had been greatly developed by the time that George III came to the throne. But George III thrust it aside as long as it was practicable for him to do so; and a few years more of William IV and of his daring inroads on the system of government by party and by cabinet would if unchecked have broken it down.

Queen Victoria was the first sovereign who was continuously loyal to the cabinet system. It reached its present development between 1837 and 1901; and nowhere can this development and the later practical working of the cabinet system be better followed than in Queen Victoria's correspondence from 1837 to 1861. The Melbourne, Palmerston, Peel and Russell *Memoirs*, and Martin's *Life of the Prince Consort* contained about all the correspondence that was helpful to a study of the working of the modern cabinet system when Sir William Anson was at work on the first edition of his treatise. Since 1886 the *Queen's Letters*, the most valuable of all the material for this purpose, have been published; and since 1886 also have been issued the memoirs of

Gladstone, Granville, Argyll and Graham among men who were in the front rank of statesmen, and these memoirs have been supplemented by those of Sidney Herbert, Selborne, Cardwell and Forster. Next as regards monographs. Clifford's *History of Private Bill Legislation* was completed only a year after the first edition of Sir William Anson's work had appeared; and since then to name only a few of the more valuable works there have appeared Pike's *Constitutional History of the House of Lords*; Redlich's exhaustive history of *Parliamentary Procedure*; Lowell's *Governments of England*; Palmer's *Peerage Law in England*; and Low's *Governance of England*. While still keeping his treatise within the compass of three volumes, Sir William Anson has drawn to the full on this splendid accumulation of new material—monographs as well as political memoirs and correspondence; and moreover every change in the method of working the machinery of the constitution due to a variety of developments in the constituencies and at Westminster is amply noted and considered in this unique and invaluable work.

Two reasons have been suggested for the welcome that students of English constitutional history and procedure must give to the revised edition of the *Law and Custom of the Constitution*. A third reason has presented itself, not altogether unexpectedly, since the last of these volumes came from the press. Henceforward the budget of 1909–1910, its rejection by the house of lords, the general election and the far-reaching struggle between feudalism and democracy in which England finds herself engaged in the early months of 1910, must establish a new date line, it may be an opening of a new era in English constitutional history. Writing as I do before the veto proposals of the Asquith government have been submitted to parliament, but with the certainty that another general election must ensue before the parliament elected in January 1910 is more than four or five months old, and realizing that the struggle between feudalism and democracy must go on until the new aggression of feudalism is at least checked, it would seem that the years 1909–1910 must stand out in English constitutional history as conspicuously as 1688, 1783 or 1832. Neither party to the great struggle can ever be again where it was before 1905—

1909. The history of England at least from the time of James I seems to warrant the inference that the English people will not long tolerate reaction. It was reaction as much as the pitiful lack of men of the front rank in politics that brought about the defeat of the tories at the general election of 1906—that reduced the number of the tories in the house of commons of 1906–1910 to less than 170 in a house of 670 members, and provoked the aggression of the house of lords that culminated in the rejection of the Lloyd George budget in November, 1909, and the appeal to the constituencies in January, 1910. Looking at the result of that appeal in England only—that is excluding the results of the election in Scotland, Wales and Ireland—it would appear from this distance that England is willing to countenance reaction, and is disposed to endorse and support the aggression of feudalism with all the reactionary, revolutionary consequences which must inevitably follow the loss of control by the house of commons of the raising and appropriation of supplies. With that power gone from the house of commons, with it even shared by the house of lords to the same extent as the power of raising and appropriating revenue is shared by the senate at Washington with the house of representatives, government by party and by cabinet, as it was developed in England from 1688 to the middle years of Queen Victoria's long reign, comes to an end; and the three extensions of the parliamentary franchise wrung with so much popular agitation from the governing classes between 1832 and 1885 would count for nothing. With the house of lords capable at any time of rejecting a budget and bringing about a general election, only a tory government could hope to live out the natural life of a parliament, or to succeed with any legislative work; for of the 618 members of the house of lords today less than 75 are of the liberal party, and within the last five or six years the liberal minority there has been as small as forty-five.

Under these circumstances liberalism would find itself in an infinitely worse plight than that of the whigs of the school of Fox and Grey in the house of commons after 1793. Parliamentary life, in fact all political activity, could then make no claim on liberals; for it would be without aim or likelihood of usefulness.

Political thought and political agitation which for nearly one hundred and fifty years have given zest and hopefulness to English life, and to the lives of hundreds of thousands of men and women who could never be of either house of parliament, must under these conditions soon come to an end, and England would be again for an indefinite period in an epoch of stand-pattism if not of positive reaction with accruing gains to the governing classes, like that which England lived through from 1793 to the incoming of Canning, and from which it only emerged after the whigs came into power in 1830 and carried the reform act of 1832. That the new aggression of the house of lords as this was developed between the rejection of plural voters' bill of 1906 and of the budget in the winter of 1909 means all this, is realized today by tories as well as by liberals, radicals and labor men. From a distance it would seem, as has been said, that England as apart from Wales, Scotland and Ireland, has by the general election of January, 1910, shown itself willing to accept and endorse the new aggression of the house of lords, the aggression of the years 1906-1910 during which the fortunes of the tories in the house of commons were at a lower ebb than at any time since modern England has had an electoral system that admitted of the popular will expressing itself in the house of commons. Looking a little closer, however, there is not much ground for regarding the vote of the electors of England as a warrant for continued aggression on the part of the house of lords or for concluding that England is ready for a period of reaction and stand-pattism like that with which the names of Pitt, Eldon, and Castlereagh are associated. Much of the success at the election in England of the lords' policy was due (1) to the cry for protection for home agriculture and home industries; (2) to the cry for increasingly large expenditures on naval construction; (3) to the zeal and political activity of over a hundred thousand holders of liquor licences, and of hundreds of thousands of holders of shares and debentures of brewery and distillery companies—all interests assailed by the budget of 1909; and (4) to the political influence and activity of the two older churches—the Established Church and the Roman Catholic Church—interested much more in maintaining the house of lords

as a safeguard of their privileges under the education system than in the constitutional question between the commons and the lords.

It must be remembered also that approximately 80 per cent of the 600,000 plural voters in England—including in this number the 20,000 voters who are of the three university constituencies, are politically allied with the land and church interests. It must also be kept in mind that feudal pressure on voters in rural England was at the last election exerted more openly and strenuously than at any election since the extension of the franchise to the laboring classes in rural England in 1884. Cross-currents such as have been described were numerous at the general election of 1910; so numerous and so powerful as to make it impossible to describe the appeal to the electorate as mainly on the issue between feudalism and democracy. Complicated as the election was by these cross currents, in spite of the impression that it seems to give that England itself was in January, 1910, disposed to support the aggression of the house of lords, the fact still remains that neither party to the great constitutional issue which has been coming to the front since 1906 can ever get back to where it stood in the parliament of 1900–1906. In the recent general election while the tories defended the right of the house of lords to reject the budget—pleaded speciously that it had only referred the budget to the electorate—they accompanied this defence of the lords with the statement that the hereditary principle was today out of harmony with existing political ideas and conditions and could no longer be defended. From hundreds of tory platforms at the last general election, there were declarations that the house of lords must be reformed; and before the new parliament had been in session a month Lord Rosebery had submitted a scheme for the remodelling and reorganization of the second chamber. The liberals on the other hand were committed to a scheme for the total abolition of the veto of the lords on finance and for a drastic limitation of the veto of the lords on all other legislation; and like the tories the liberals also had a scheme for remodelling and reorganizing the upper house. Both political parties are thus committed to schemes for remodelling the house of lords. Neither scheme—that proposed by Lord Rosebery, nor that to which

the Asquith government is committed—is likely to be carried in the parliament that convened immediately after the general election of January, 1910. Another general election must precede the adoption of any scheme for reforming the constitution of the house of lords. Whether the scheme finally adopted is that of the liberals or that for which Lord Rosebery is responsible, will mainly depend on the result of the second general election directly due to the aggression of the house of lords between 1906 and 1909, which culminated so far as the parliament of 1906–1909 was concerned in the rejection by the lords of the budget of 1909.

The one settled fact in the complicated political situation in England in the early months of 1910 is that the country is on the eve of a great constitutional change. The first move may be reactionary or it may give more power to democracy. All will depend on the next general election; but even should the election give the reactionaries easy control of the house of commons for one parliament the progressive parties in England—the liberal, radical and labor parties—will not rest content under any new constitution of the house of lords brought about by the upholders—peers or commoners—of the aggression of the house of lords since 1906. Important and far-reaching constitutional changes are thus again in sight—constitutional changes which are likely to rank in importance with those of 1832, 1867 and 1884–1885; and for this reason the revised edition of Sir William Anson's *Law and Custom of the Constitution* has another value in addition to those which were commented upon at the outset of this article. This additional importance of Sir William Anson's classic is due to the fact that it was completed in the year which witnessed the beginning of the crisis out of which great constitutional changes must inevitably develop. For the years that preceded 1688 and 1832 there has never been a comprehensive work like that of Sir William Anson. Such a work, inclusive and characterized by scholarly care and insight, would have been invaluable to students of the development and working of the English governmental system. It would have been invaluable because from it it would have been possible to realize how the governmental ma-

chinery stood, and how it was worked up to the eve of the great changes of 1688 or those of 1832. Changes of nearly as much significance now seem to be pending in England. When they have come, these three volumes of Sir William Anson's passed for the press on the eve of the great constitutional crisis of 1909–1910 must have a value quite distinct from the now long-established every-day usefulness of the earlier editions of the *Law and Custom of the Constitution*, because they state with amplest detail and accuracy how the constitution was understood and how it was worked in the years immediately preceding the new aggression of the house of lords—the aggression which has today made imperatively necessary a great constitutional change—one which shall check democracy, or one which shall tend to its progress and greater power.

Party politics are consistently and conspicuously avoided by Sir William Anson. But he must have seen even before the crisis of 1909–1910 that some great change was coming; for he summarizes the recommendations of the lords' committee of 1907 for increasing the efficiency of the upper house and also explains the veto proposals which were submitted to the house of commons by the late Sir Henry Campbell Bannerman in 1907, and briefly states his objections to these proposals, which are now understood to be part of those to which the Asquith government is to ask parliament—the house of lords as well as the house of commons—to give assent early in the session of 1910. The Bannerman resolution agreed to on June 7, 1907, by the house of commons, after three nights' debate, as quoted by Sir William Anson, reads as follows: "That in order to give effect to the will of the people, as expressed by their elected representatives, it is necessary that the power of the other house to alter or reject bills passed by this house should be so restricted by law as to secure that within the limits of a single parliament the will of the commons shall prevail."

"The legislation needed for carrying this resolution into effect," continues Sir William Anson, "was indicated by the prime minister. If the two houses disagreed, a conference was to be held of two groups chosen one from each house; the proceedings were to be private, and the points of difference were to be discussed.

Failing agreement the bill might be reintroduced after an interval of at least six months. If difference still existed the same procedure would be again adopted; if the houses still disagreed the bill would be introduced a third time and sent up with an intimation to the lords that if they declined to accept it without alteration it would be passed notwithstanding." "The result of such a change in the relation of the two houses as was indicated in the ministerial speeches during this debate," reads Sir William Anson's comment on this proposed reform, "would be a single-chamber constitution. Whatever may be said for the opportunities conceded to the lords for discussion and reconsideration, that is a single-chamber constitution in which one house can override the will of the other without an appeal to the country." "The matter," adds Sir William Anson, "remains a standing difficulty. The majority of the house of lords are conservative in their politics. A liberal government not unnaturally resents the suggestion that if the house of lords rejects or materially alters their measures they must put their followers to the risk and expense of a general election in order to substantiate the claim of their policy to be acceptable to the electorate."

It is beyond question that a liberal government resents the position in which it now invariably finds itself in its relations with the house of lords. As long as a considerable section of the governing classes were of the liberal party there were comparatively few difficulties between a liberal government supported by a liberal house of commons and the house of lords, because a liberal cabinet dominated by whigs of the governing classes was always careful not to commit itself to any legislative proposals that would bring it into conflict with the governing classes, whig as well as tory, in the house of lords. But since Sir William Anson's treatise was first published two great changes have come over political conditions in England which greatly affect the relations between a liberal house of commons and the tory house of lords. Following the home rule split in the liberal party in 1886 the whig section of the governing classes moved over almost as a body to the tory party with an enormous gain in numerical strength for the tory party in the house of lords. This movement in 1886 was so complete that by 1905 when the Campbell Bannerman govern-

ment came into power there were fewer than forty-five liberal peers, although between 1830 and 1905, 180 peers had been created at the recommendation of whig or liberal premiers, including 79 peers who owed their creation to Gladstone between 1868 and 1894. While the peers and the governing classes generally with the disappearance of whiggism have thus been moving over to toryism and leaving liberal peers in a decreasing and hopeless minority, there have been movements in the constituencies of almost equal significance which affect the relations of the house of commons and the house of lords. In Ireland the nationalists since 1886 have more than maintained the strength that accrued to them after the extension of the franchise in 1884. In England also in the main as a long delayed result of the extension of the parliamentary franchise in 1884, there has since 1900 come into existence a labor party that can command from forty to forty-six members in the house of commons. Moreover in the period that lay between 1886 and 1905 the governing classes of landed possessions and of territorial traditions lost their old dominance in liberal cabinets; for in the Campbell Bannerman and Asquith ministries as they existed from 1905 to 1910 there were never more than five members of the ministry who were of the landed classes.

These two great changes—the moving over of the landed classes from the whig or liberal to the tory party, and the incoming of the Irish nationalists and the labor party, have inevitably involved strained relations between a liberal government and a liberal house of commons and the chamber in which the governing classes, whether whig or tory, can nowadays continuously apply the brake on democratic progress. Collisions between the two houses were inevitable after the general election of 1906 had reduced the tories in the house of commons to a strength which never exceeded 170. The tories were in a weak and hopeless condition in the house of commons during the parliament of 1906–1910; but at no time in the history of toryism were the tories stronger or more aggressive in the house of lords. Nominally England was under liberal rule from 1906 to 1910. There was a liberal government and it was supported by a majority without precedent; and moreover the liberals lost little of their numerical strength in the house of com-

mons at the by-elections. But only nominally was a liberal government in power. Power in many vital issues really lay with the Marquis of Lansdowne, a statesman never of front rank, who like his supporters in the house of lords was responsible to no constituents, and who had no ascertained or acknowledged responsibility to the crown. This was the position of the liberal government from 1906 to 1910. Then came the culminating aggression of the house of lords, and following that aggression the declaration of Mr. Asquith, at Albert Hall, London, on the eve of the general election, that "we shall not assume office, and we shall not hold office, unless we can secure the safeguards which experience shows us to be necessary for the legislative utility and honor of the party of progress." Mr. Asquith and the present liberal government may not be able to secure these safeguards. But the liberal party is without hope until it is in possession of some such safeguards as those spoken of by Mr. Asquith. It may be that the next general election may make it possible for the tories to carry their scheme for changes in the constitution of the house of lords, giving it added strength as a barrier against democracy. That will be their aim. But a reform of the house of lords on these lines and with this intention will serve only to quicken the movement by the liberals for a reform which shall make the house of lords much less of a barrier between England and democracy than it has been since 1885. When that barrier has been weakened other democratic reforms long overdue will soon follow; and in a treatise like that of Sir William Anson's a section of a chapter extending to nearly thirty pages will no longer be necessary to an understanding of who may elect members from England and Wales, Scotland and Ireland, to the house of commons. There is not an unnecessary word in this long section which is concerned with the parliamentary franchises; for Sir William Anson has to deal with rights to vote which are based on laws passed as long ago as 1430. A careful reading of the section does more than make clear the tangled electoral system on which the house of commons is elected. It shows that there are other barriers between England and democracy than the obvious barrier which is now being assailed, and this in spite of the fact that almost every man of settled abode can be in possession of the parliamentary franchise.